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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 CYNTHIA M. MCCLOUD,

10 Plaintiff,

11 v.

12 NANCY A. BERRYHILL, Acting  
13 Commissioner of Social Security,

14 Defendant.

CASE NO. C17-5290-MAT

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

15 Plaintiff Cynthia Marie McCloud proceeds through counsel in her appeal of a final decision  
16 of the Commissioner of the Social Security Administration (Commissioner). The Commissioner  
17 denied Plaintiff's applications for Supplemental Security Income (SSI) and Disability Insurance  
18 Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the  
19 ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is  
20 AFFIRMED.

21 **FACTS AND PROCEDURAL HISTORY**

22 Plaintiff was born on XXXX, 1968.<sup>1</sup> She has a tenth-grade education and a GED, and has

23 <sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 worked as a cleaner, in-home caregiver, and temporary laborer. (AR 43-45, 246.)

2 Plaintiff protectively applied for SSI and DIB in May 2013. (AR 193-208, 241.) Those  
3 applications were denied and Plaintiff timely requested a hearing. (AR 135-41, 144-48.)

4 On August 3, 2015, ALJ Kelly Wilson held a hearing, taking testimony from Plaintiff and  
5 a vocational expert. (AR 38-77.) On December 30, 2015, the ALJ issued a decision finding  
6 Plaintiff not disabled. (AR 13-31.) Plaintiff timely appealed. The Appeals Council denied  
7 Plaintiff's request for review on February 17, 2017 (AR 1-7), making the ALJ's decision the final  
8 decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this  
9 Court.

### 10 **JURISDICTION**

11 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

### 12 **DISCUSSION**

13 The Commissioner follows a five-step sequential evaluation process for determining  
14 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
15 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not  
16 engaged in substantial gainful activity since June 1, 2008, the alleged onset date. (AR 15.) At  
17 step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ  
18 found severe Plaintiff's affective disorder, anxiety disorder, personality disorder, and attention  
19 deficit hyperactivity disorder. (AR 15-18.) Step three asks whether a claimant's impairments meet  
20 or equal a listed impairment. The ALJ found that Plaintiff's impairments did not meet or equal  
21 the criteria of a listed impairment. (AR 18-20.)

22 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
23 residual functional capacity (RFC) and determine at step four whether the claimant has

1 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
2 performing work at all exertional levels, with the following additional limitations: she can perform  
3 simple tasks of reasoning level 1-3, but cannot perform more complex tasks consistently. She can  
4 have superficial contact with the public (i.e. she can be around the public and interact with them  
5 briefly, but should not work in customer service, sales, or counter-type work). She can work in  
6 proximity to coworkers and supervisors, with brief interaction, but would do better in more solitary  
7 work tasks. (AR 20.) With that assessment, the ALJ found Plaintiff able to perform past relevant  
8 work as cleaner – housekeeper, auto detailer, and cleaner – institutional. (AR 30-31.)

9 If a claimant demonstrates an inability to perform past relevant work, the burden shifts to  
10 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an  
11 adjustment to work that exists in significant levels in the national economy. Because the ALJ  
12 found Plaintiff capable of performing past relevant work, the ALJ did not proceed to step five.  
13 (AR 31.)

14 This Court's review of the ALJ's decision is limited to whether the decision is in  
15 accordance with the law and the findings supported by substantial evidence in the record as a  
16 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
17 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
18 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
19 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
20 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
21 2002).

22 Plaintiff argues the ALJ erred in (1) discounting her subjective symptom testimony, (2)  
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1 assessing certain medical opinions, and (3) assessing lay evidence.<sup>2</sup> The Commissioner argues  
2 that the ALJ's decision is supported by substantial evidence and should be affirmed.

3 Subjective symptom testimony

4 The ALJ discounted Plaintiff's subjective testimony for a number of reasons, including (1)  
5 Plaintiff claims to be disabled since 2008, but did not receive any mental health treatment prior to  
6 2013, yet she sought treatment for physical issues during that time period; (2) clinical observations  
7 and Plaintiff's reported activities are inconsistent with her allegations of severe social difficulties  
8 and panic attacks; (3) the record contradicts Plaintiff's allegations of severe deficits as to  
9 concentration, persistence, and pace; (4) Plaintiff's mental symptoms improved once she started  
10 receiving treatment; and (5) Plaintiff made many inconsistent statements, regarding her work  
11 attempts, substance abuse, whether she lived with her husband, and whether she can leave her  
12 house alone. (AR 20-25.) Plaintiff argues that these reasons are not clear and convincing, as  
13 required in the Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

14 Plaintiff argues first that the ALJ erred in finding that her lack of mental health treatment  
15 undermined her allegations of disabling mental symptoms without asking her why she did not  
16 receive treatment. Dkt. 15 at 8. The Social Security Ruling (SSR) in effect at the time of the  
17 ALJ's decision, which Plaintiff cites for the proposition that the ALJ was required to ask her why  
18 she did not receive treatment for so many years, does not impose such a requirement. *See* SSR 96-  
19 7p, 1996 WL 374186, at \*7-8 (Jul. 2, 1996). SSR 96-7p instructs ALJs to consider reasons  
20 provided by the claimant or evident from the record that could explain the lack of treatment. *Id.*

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22 <sup>2</sup> Plaintiff's opening brief also challenges the ALJ's RFC assessment and step-five findings, but in  
23 doing so only reiterates arguments made elsewhere. Dkt. 15 at 16-17. Accordingly, these issues will not  
be analyzed separately.

1 Plaintiff offered no explanation for her lack of treatment, and did not offer any explanation to  
2 clinicians. (See AR 547 (DSHS reviewer: “[Plaintiff] has also never bothered to get [mental  
3 health] treatment in the past which is also a complicating factor since she has been on welfare in  
4 the past and that is the reason she gives for not being able to work.”)). There is no evidence that  
5 Plaintiff’s lack of treatment for mental health issues was the result of any factor other than her  
6 personal preference, and therefore the ALJ reasonably construed Plaintiff’s lack of treatment as  
7 undermining her allegations of disabling mental limitations. See *Molina v. Astrue*, 674 F.3d 1104,  
8 1113-14 (9th Cir. 2012).

9 Plaintiff also objects to the ALJ’s identification of clinical findings that undermine her  
10 allegations of severe social limitations, contending that an ALJ is not entitled to reject testimony  
11 solely because objective evidence does not support the allegation. Dkt. 15 at 9. But the ALJ  
12 identified evidence that contradicted Plaintiff’s allegations, rather than merely failed to corroborate  
13 it. For example, the ALJ cited clinical findings describing Plaintiff as friendly, cooperative,  
14 pleasant, with good eye contact. (AR 21.) The ALJ also noted that even when providers noted  
15 that Plaintiff was fidgety or agitated, she could nonetheless interact. (*Id.*) The ALJ did not err in  
16 considering whether Plaintiff’s alleged extreme social limitations were contradicted by the medical  
17 record. See *Carmickle v. Comm’r of Social Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008)  
18 (“Contradiction with the medical record is a sufficient basis for rejecting the claimant’s subjective  
19 testimony.”). Although Plaintiff conclusorily states that her clinical findings “are in fact  
20 reasonably consistent with her testimony[,]” she does not cite any particular evidence and does not  
21 show that the ALJ’s findings are not reasonable. Dkt. 15 at 9. Accordingly, Plaintiff has not  
22 established error in the ALJ’s reasoning.

23 Furthermore, the ALJ noted that Plaintiff was able to attend church, go to the casino, and

1 go to the library, which was inconsistent with her testimony that she could not be around other  
2 people and did not do well in public. (AR 19, 21.) This finding supports the ALJ's assessment of  
3 Plaintiff's testimony. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (activities may  
4 undermine credibility where they (1) contradict the claimant's testimony or (2) "meet the threshold  
5 for transferable work skills"). Plaintiff notes that she reported that her social interactions "are  
6 mostly limited to family members" (Dkt. 15 at 9 (citing AR 514)), but this self-report does not  
7 address the activities cited by the ALJ that involve others beyond family members, and thus does  
8 not establish error in the ALJ's reasoning.

9       Next, Plaintiff argues that the ALJ erred in considering whether her allegations of  
10 concentration, persistence, and pace deficits were consistent with the record, because those  
11 allegations could not be rejected solely based on a lack of supporting objective evidence. Dkt. 15  
12 at 9. But the ALJ cited evidence that contradicted Plaintiff's allegations of disabling limitations,  
13 and this consideration is proper. *See Carmickle*, 533 F.3d at 1161 ("Contradiction with the medical  
14 record is a sufficient basis for rejecting the claimant's subjective testimony."). Furthermore, the  
15 ALJ also cited Plaintiff's activities — such as riding a bike to appointments, using public  
16 transportation, working part-time since the alleged disability onset, and using the library and  
17 computers — as evidence that Plaintiff's deficits as to concentration, persistence, and pace were  
18 not disabling. (AR 21-22.) The ALJ reasonably concluded that Plaintiff's ability to perform these  
19 activities, that arguably require more concentration and persistence than she alleged she retained,  
20 undermined her statements about the limiting effects of her impairments.

21       The ALJ also cited Plaintiff's improvement with mental health treatment as a reason to  
22 discount her testimony about the limiting effects of her impairments. (AR 22.) Plaintiff argues  
23 that this "is not a convincing reason to reject [her] testimony about the symptoms and limitations

1 she has continued to experience even with the treatment.” Dkt. 15 at 10. But the ALJ cited  
2 Plaintiff’s statements that she felt “much more stable” on medication, that she was able to  
3 participate in more activities, that her medication helped her moods and focus, and that she was  
4 doing well and felt less anxious. (AR 22 (citing AR 614, 616-17, 678, 681).) Plaintiff does not  
5 cite any portion of the record that contradicts the ALJ’s findings, and thus has not shown that the  
6 ALJ erred in finding that the evidence showed improvement with medication or in discounting  
7 Plaintiff’s testimony on that basis. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008)  
8 (ALJ permissibly inferred that the claimant’s pain was not as disabling as alleged “in light of the  
9 fact that he did not seek an aggressive treatment program and did not seek an alternative or more-  
10 tailored treatment program after he stopped taking an effective medication due to mild side  
11 effects”).

12         Next, the ALJ noted that Plaintiff reported to a housing advocate that her criminal history  
13 was a barrier to employment. (AR 22 (citing AR 322).) The ALJ found this statement undermined  
14 Plaintiff’s application for disability, because a person is eligible for disability if his or her  
15 unemployment is primarily caused by his or her impairments. (AR 23.) Plaintiff argues that “there  
16 is no evidence that this is the main reason [she] is not working[,]” and that may be true. Dkt. 15  
17 at 10. But the ALJ did not state that it was, and did not err in finding that Plaintiff’s allegation of  
18 disability was undermined by her reference to her criminal history as a barrier to employment,  
19 given that Plaintiff did not apparently cite any other barriers to employment in this conversation  
20 with her housing advocate. (AR 322.) Plaintiff’s statement undermines her allegation of disability,  
21 even if it does not conclusively prove that she is not entitled to benefits. *See* SSR 82-61, 1982 WL  
22 31387, at \*1 (Jan. 1, 1982) (“A basic program principle is that a claimant’s impairment must be  
23 the primary reason for his or her inability to engage in substantial gainful work.”).

1 The ALJ also cited Plaintiff's inconsistent and inaccurate reports of her substance use. (AR  
2 23.) Plaintiff argues that this is not a convincing reason to reject all of her testimony, but the Ninth  
3 Circuit has found that such inconsistencies are a valid reason to discount a claimant's subjective  
4 reports. *See Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9th Cir. 1999).

5 Next, the ALJ noted that at the time Plaintiff applied for benefits, she stated that she was  
6 not living with her husband (even though the record indicates that she was), and her husband's  
7 income would have been material to her eligibility for SSI. (AR 23.) The ALJ found that  
8 Plaintiff's inaccurate reporting undermined her allegations. (*Id.*) Plaintiff emphasizes that the  
9 record indicates that she did not always live with her husband, but does not address the specific  
10 inconsistencies identified by the ALJ, which suggest that Plaintiff was living with her husband at  
11 the same time she declared under penalty of perjury that she lived alone. Dkt. 15 at 10. Whether  
12 she lived with her husband at other times is not relevant to the ALJ's finding, and the ALJ herself  
13 acknowledged that Plaintiff's husband eventually did live separately. (AR 23.) Thus, Plaintiff's  
14 statement that she did not always reside with her husband does not establish error in the ALJ's  
15 finding regarding Plaintiff's living situation at the time of her benefits application.

16 Lastly, the ALJ cited Plaintiff's hearing testimony regarding her need to sleep most of the  
17 time, or stay in bed most days. (AR 23-24.) The ALJ found that the record showed that when  
18 Plaintiff was compliant with treatment, she was not as sedated as she described at the hearing. (AR  
19 24.) The ALJ acknowledged that Plaintiff reported fatigue one time while she was receiving  
20 treatment, but that her providers switched her medication as a result. (AR 24 (citing AR 681).)  
21 This is a clear and convincing reason to discount Plaintiff's testimony regarding her fatigue.

22 Plaintiff goes on to devote nearly four pages of her opening brief to a summary of her  
23 hearing testimony, but does not link this testimony to any of the ALJ's findings. Dkt. 15 at 10-14.



1 This portion of the brief does not establish any error in the ALJ's decision, and any argument that  
2 this testimony should be credited is undermined by Appeals Council evidence wherein Plaintiff  
3 reported to her counselor that she did not always tell "the honest truth" at her hearing because she  
4 was nervous and her attorney had upset her before the hearing. (AR 690.)

5 Because Plaintiff has not shown that the ALJ erred in discounting her subjective testimony,  
6 the ALJ's findings in this regard are affirmed.

#### 7 Medical evidence

8 Plaintiff challenges the ALJ's assessment of certain medical opinions, and the Court will  
9 address each disputed opinion in turn.

#### 10 Legal standards

11 In general, more weight should be given to the opinion of a treating physician than to a  
12 non-treating physician, and more weight to the opinion of an examining physician than to a non-  
13 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted  
14 by another physician, a treating or examining physician's opinion may be rejected only for "clear  
15 and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).  
16 Where contradicted, a treating or examining physician's opinion may not be rejected without  
17 "specific and legitimate reasons' supported by substantial evidence in the record for so doing."  
18 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ may reject  
19 physicians' opinions "by setting out a detailed and thorough summary of the facts and conflicting  
20 clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157  
21 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). Rather than merely stating  
22 her conclusions, the ALJ "must set forth [her] own interpretations and explain why they, rather  
23 than the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

1 Kenneth A. Hapke, Ph.D.

2 Dr. Hapke performed a psychological evaluation of Plaintiff in November 2013, at a time  
3 when Plaintiff was not receiving mental health treatment. (AR 513-17.) Dr. Hapke's medical  
4 source statement reads in its entirety:

5 Prognosis is deemed guarded for this 45-year-old claimant due to the chronic and  
6 debilitating nature of multiple symptoms of mental illness. At this time, the  
7 claimant's symptoms are untreated and her condition will likely deteriorate. There  
8 is strong evidence of antisocial personality features as well as neurocognitive  
9 dysfunction. Psychosocial stressors as well as significant impairment of memory  
function further challenge the claimant's ability to engage in substantial and gainful  
employment. Impairment of her memory skills would adversely impact any  
vocational re-training. For these reasons, it is unlikely that the claimant will be able  
to return to future substantial and gainful employment in the foreseeable future.

10 (AR 516-17.) The ALJ gave some weight to Dr. Hapke's opinion, but rejected his conclusion that  
11 it was unlikely Plaintiff could return to substantial and gainful employment as "too broad" because  
12 it lacked a function-by-function analysis and was outside Dr. Hapke's expertise. (AR 26.) The  
13 ALJ also noted that the State agency reviewing consultants considered Dr. Hapke's opinion and  
14 translated it and the remainder of the record into an opinion regarding Plaintiff's functional  
15 limitations. (*Id.*)

16 Plaintiff argues that the ALJ's reasoning is not legitimate because Dr. Hapke did not render  
17 a vocational opinion. Dkt. 15 at 3. Plaintiff is incorrect. Whether a claimant's limitations prevent  
18 work is indeed a vocational opinion. *See McLeod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011) ("A  
19 treating physician's evaluation of a patient's ability to work may be useful or suggestive of useful  
20 information, but a treating physician ordinarily does not consult a vocational expert or have the  
21 expertise of one. An impairment is a purely medical condition. A disability is an administrative  
22 determination of how an impairment, in relation to education, age, technological, economic, and  
23 social factors, affects ability to engage in gainful activity."). This situation is distinguishable from

1 *Hill v. Astrue*, cited in Plaintiff’s reply brief (Dkt. 20 at 2), because in that case, the ALJ did not  
2 address a psychologist’s opinion that a claimant’s “combination of mental and medical problems  
3 makes the likelihood of sustained full time competitive employment unlikely.” 698 F.3d 1153,  
4 1159-60 (9th Cir. 2012). The Ninth Circuit in *Hill* found that the psychologist’s opinion should  
5 have been addressed by the ALJ, and did not place the quoted portion of the opinion in the context  
6 of the rest of the psychologist’s opinion. *Id.* Thus, it is not clear whether the opinion in *Hill* was  
7 as broad as Dr. Hapke’s opinion, and the Court there focused on whether it was an opinion that  
8 should have been addressed by an ALJ. *Id.* Under the circumstances of this case, where the ALJ  
9 addressed Dr. Hapke’s opinion, the conclusory nature of his vocational opinion was a legitimate  
10 reason to discount the opinion.

11 The ALJ also noted that the State agency psychological consultants reviewed Dr. Hapke’s  
12 opinion and found that Dr. Hapke’s testing was not entirely reliable because it relied on Plaintiff’s  
13 self-reporting, which lacked credibility. (AR 26.) The ALJ further commented that the State  
14 agency opinions were more specific as to Plaintiff’s functional limitations than Dr. Hapke’s  
15 opinion. (*Id.*) Although Plaintiff argues that the higher level of detail in the State agency opinions  
16 is not a reason to discount Dr. Hapke’s opinion (Dkt. 15 at 3), the ALJ did not err in considering  
17 how the State agency consultants translated the findings of Dr. Hapke into concrete functional  
18 limitations. *See, e.g., Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1172-74 (9th Cir. 2008).

19 Because the ALJ provided multiple specific, legitimate reasons to discount Dr. Hapke’s  
20 opinion, the ALJ’s assessment of that opinion is affirmed.

21 Tasmyn Bowes, Psy.D.

22 Dr. Bowes examined Plaintiff in January 2014 and February 2015, and completed DSHS  
23 form opinions after both examinations. (AR 523-46.) The ALJ summarized Dr. Bowes’ opinions,

1 and discounted them because Dr. Bowes relied on Plaintiff's self-report, which was not entirely  
2 reliable, and was unaware of Plaintiff's "regular marijuana use." (AR 27.) The ALJ also noted  
3 that the State agency consultants found that Dr. Hapke's testing was inconsistent with Dr. Bowes'  
4 findings, and noted inconsistencies throughout Plaintiff's self-report. (*Id.*)

5 Plaintiff argues that the ALJ erred in finding that Dr. Bowes relied on her self-report (Dkt.  
6 15 at 5), but Dr. Bowes did not review any other evidence (other than her own 2014 evaluation, at  
7 the time of the 2015 evaluation) and therefore had no other source of information about Plaintiff's  
8 symptoms. (AR 523, 534.) Most of the content of Dr. Bowes' opinions consists of self-reported  
9 statements in quotes. (AR 523-24, 534-36.) The ALJ did not err in discounting Dr. Bowes'  
10 opinions to the extent she relied on Plaintiff's self-report in reaching her conclusions. *See Bray v.*  
11 *Comm'r of Social Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) ("As the district court noted,  
12 however, the treating physician's prescribed work restrictions were based on Bray's subjective  
13 characterization of her symptoms. As the ALJ determined that Bray's description of her limitations  
14 was not entirely credible, it is reasonable to discount a physician's prescription that was based on  
15 those less than credible statements."). Dr. Bowes did not cite any objective findings to support her  
16 conclusions, and the mental status examination (MSE) results do not necessarily support the  
17 functional ratings she described. For example, the MSE results in 2014 and 2015 are identical, but  
18 the functional ratings are more severe in multiple categories in the 2015 opinion. (AR 526-28,  
19 537-39.) The ALJ did not err in considering the extent to which Dr. Bowes relied on Plaintiff's  
20 self-reporting in reaching her conclusions, because the ALJ properly found that Plaintiff's  
21 subjective statements were not entirely reliable.

22 Plaintiff also contends that Dr. Bowes was "well aware" of her marijuana use, and Dr.  
23 Bowes' opinions indeed reference Plaintiff's marijuana use on "most days." (AR 524, 535.) The

1 Commissioner concedes that this portion of the ALJ's analysis is erroneous. Dkt. 19 at 15 n.2.  
2 This error is harmless, in light of the ALJ's other valid reason to discount Dr. Bowes' opinions.

3 Accordingly, the ALJ's assessment of Dr. Bowes' opinions is affirmed.

4 Other medical evidence

5 Plaintiff's opening brief contains a summary of medical evidence (Dkt. 15 at 5-7) that does  
6 not assign error to any portion of the ALJ's decision. The Court therefore need not address this  
7 evidence.

8 State agency opinions

9 Plaintiff argues that the ALJ erred in giving "significant weight" to the State agency  
10 opinions because they were inconsistent with medical evidence and the opinions of Drs. Hapke  
11 and Bowes. Dkt. 15 at 7. Plaintiff also argues that because the State agency consultants did not  
12 have the opportunity to review the entire record, their opinions should have been discounted. *Id.*

13 Because the ALJ properly discounted the opinions of Drs. Hapke and Bowes, as described  
14 *supra*, inconsistency between the State agency opinions and those opinions does not undermine  
15 the ALJ's decision. Furthermore, the ALJ had the opportunity to review the entire record, and  
16 indicated that she found the State agency opinions to be consistent with certain clinical findings as  
17 well as Plaintiff's activities. (AR 26-27.) Because the State agency opinions were not contradicted  
18 by all of the remaining evidence in the record, the ALJ did not err in failing to discount them. *See*  
19 *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

20 Lay evidence

21 Plaintiff argues that the ALJ erred in assessing the lay evidence, specifically statements  
22 provided by agency personnel and Plaintiff's family members. An ALJ must provide germane  
23 reasons to discount lay statements. *See Smolen v. Chater*, 80 F.3d 1273, 1288-89 (9th Cir. 1996).

1 Agency personnel

2 An agency interviewer described Plaintiff as a “VERY POOR historian with regard to both  
3 work history and medical history[.]” (AR 242.) The ALJ did not discuss this statement, and  
4 Plaintiff argues that this was error. But this statement is not “significant, probative evidence”  
5 rejected by the ALJ; indeed, it is consistent with the ALJ’s finding that Plaintiff’s subjective  
6 reporting contains many inconsistencies and inaccuracies. (AR 22-25.) Accordingly, the ALJ was  
7 not required to address the interviewer’s description of Plaintiff’s inability to describe her work  
8 and medical history. *See Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (holding that an  
9 ALJ “may not reject ‘significant probative evidence’ without explanation.” (quoting *Vincent v.*  
10 *Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984))).

11 Plaintiff’s sister and husband

12 Plaintiff’s sister and husband submitted written statements describing Plaintiff’s symptoms  
13 and limitations. (AR 286-93, 341.) The ALJ summarized these statements and found that they  
14 were inconsistent with the medical record in some ways, uncorroborated by the medical record in  
15 other ways, and inconsistent with Plaintiff’s activities. (AR 29-30.) The ALJ also found that  
16 Plaintiff’s sister and husband relied on Plaintiff’s own subjective description of her symptoms, and  
17 the ALJ found that such statements were not entirely reliable. (AR 30.)

18 These are germane reasons to discount the lay statements. The ALJ gave examples of  
19 inconsistencies or lack of corroboration with the medical record, and explained how Plaintiff’s  
20 activities contradicted the lay statements. (AR 29-30.) These reasons are sufficient. *See Lewis v.*  
21 *Apfel*, 236 F.3d 503, 511-12 (9th Cir. 2001) (germane reasons for discounting lay testimony  
22 included inconsistency with medical evidence, evidence of claimant’s activities, and claimant’s  
23 reports). Accordingly, the ALJ’s assessment of the lay statements is affirmed.

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DATED this 23rd day of February, 2018.

Mary Alice Theiler  
United States Magistrate Judge